IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

OP.No. 16075 of 2000(L)

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PETITIONER:

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M/S. WAYANAD MINING AND MRAMATH WORKERS' (WORK SHOP) INDUSTRIAL CO-OP. SOCIETY LTD., REP.BY ITS SECRETARY, NO. 5. IND (D) 239, AMBALAVAYAL P.O., SULTHAN'S BATHERRY TALUI, WAYANAD DISTRICT.

BY ADV. SRI.G.G.MANOJ

RESPONDENTS:

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1. EMPLOYEES' PROVIDENT FUND APPELLATE TRIBUNAL, 7TH FLOOR, 6 SKYLARK BUILDING, NEHRU PLACE, NEW DELHI - 110 019.

2. ASST. PROVIDENT FUND COMMISSIONER, BHAVISHYANIDHI BHAVAN, P.B.NO. 1806, ERANHIPALAM P.O., KOZHIKODE-673 006.

3. ENFORCEMENT OFFICER, EMPLOYEES PROVIDENT FUND, KALPETTA, WAYANAD DISTRICT.

BY ADV. SRI.MATHEWS J.NEDUMPARA, SC,P.F.ORGSN.
SRI.THOMAS MATHEW NELLIMOOTTIL,SC, P.F.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:
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EXT.P1 TRUE COPY OF REVIEW PETITION DT. 15-3-1997.

EXT.P2 ORDER DT.12-7-1999.

EXT.P3 ORDER DT. 7-12-1999.

EXT.P4 AFFIDAVIT FILED BY THE PETITIONER DT. 1-3-2000.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 16075 of 2000

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Dated this, the 31st January, 2007.

J U D G M E N T

Petitioner is a Co-operative Society. The 2nd respondent initiated proceedings for coverage of the Society under the Employees Provident Funds and Miscellaneous Provisions Act. By Ext. P2 order, the petitioner was directed to pay an amount of Rs. 3,40,666.80 as contributions due from the petitioner under the Act for the period from February 1996 to February, 1999. This order was taken in appeal before the 1st respondent -Tribunal, which passed Ext. P3 order wherein the Tribunal found that since the petitioner is employing 51 persons, the petitioner is liable to be covered under the Act. But on the question of correct computation of the contribution payable, the matter was remanded to the 2nd respondent for fresh consideration. Exts. P2 and P3 orders are under challenge in this original petition.

2. The contention of the petitioner is that since the petitioner is a Co-operative Society, by virtue of Section 16, the petitioner is not liable to be covered under the Act as the petitioner is employing only less than 50 persons in its establishment. However, I find that the question as to whether the petitioner was actually employing 50 or more persons was considered by the Regional Provident Fund Commissioner by order dated 3-2-1997, which has been referred to in Ext. P2 order. That order relates to coverage of the petitioner's establishment under the Act, wherein apparently there is a finding that the number of persons employed by the petitioner are 51. That order has not been subjected to challenge in this original petition or before the Tribunal. Without challenging that order, the petitioner cannot successfully challenge Ext. P3 order, which is only in relation to computation of contributions payable. In any event, the question as to whether the petitioner is employing 50 or more persons is purely a

question of fact, the correctness of which is beyond the purview of my jurisdiction under Article 226 of the Constitution of India. The original authority and the appellate authority have found that the petitioner was actually employing 51 persons in its establishment. That question of fact cannot be interfered with by me in these proceedings in so far there is no reliable material before me to find that the finding is in any way perverse. For that reason also, the finding in Ext. P3 that the petitioner is liable to be covered under the Act cannot be challenged by the petitioner.

In the above circumstances, I do not find any merit in the challenge against Exts. P2 and P3 orders and accordingly the original petition is dismissed.

Sd/- S. Siri Jagan, Judge.

Tds/